

27 February 1976

MEMORANDUM FOR: Mr. Lehman

SUBJECT : Rescission of NSCIDs 2, 3 and 7

X1 1. This memorandum results from your meeting of 1100 hours yesterday and our subsequent telephone conversation. As I understand it, the action before the house is that the [ ] group is to consider whether NSCIDs 2, 3 and 7 may be rescinded in the near future without replacement by revised NSCIDs, or CFI directives or DCI directives, without hindering the intelligence operations of the Government. If the [ ] group so concludes, today or in the next few days, it would so advise the CFI at its meeting of 3 March, which in turn might then go forward to the National Security Council recommending that the National Security Council rescind those three directives at an early date.

25X 2. In addition to this projected timetable, other factors control the timing of Agency and Community decisions. The most fundamental of course is that the Community and the Agency must carry on their activities each day, and must be in compliance with governing directives at all times. Another is that the Director and all concerned want to move forward as rapidly as possible. Still another is that the Executive Order, except section 5 (which is not an authorizing section), is effective and binding upon all right now. And finally, the Executive Order provides that certain actions must be accomplished in 90 days, among them being that the NSCIDs are to be amended "to be consistent with this Order within ninety days." It is to be noted that the requirement that the NSCIDs be made consistent with the Executive Order does not require that they be amended for any other purpose.

3. Still another basic point is that the NSCIDs remain fully operative, and the departments, agencies and components should proceed to exercise their responsibilities thereunder, except to the extent that there may be any provisions to the contrary in the Executive Order.<sup>1</sup>

4. As to the three NSCIDs, No. 2 concerns the coordination of overt collection activities, No. 3 regulates the coordination of intelligence production and No. 7 concerns critical intelligence. These are discussed in more detail in the following paragraphs.

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<sup>1</sup>Possibly one such "provision to the contrary" involves the matter of the continued existence, or the non-existence, of USIB and other committees created or mentioned in one or more NSCIDs. The White House press release accompanying the Executive Order indicates that USIB, and Intelligence Resources Advisory Committee, National Security Council Intelligence Committee, Executive Committee for resource control of certain intelligence collection activity, and the 40 Committee as well, "are abolished," but the Order includes no language which specifically abolishes them. Whether it is possible to reach a legal determination that by virtue of any provisions of the Order, in conjunction with the press release language, the President's statements at his 18 February press conference or otherwise, those committees have been legally abolished may need to be addressed. (Among the important points in this regard is that different agencies might arrive at conflicting or inconsistent legal conclusions on this point.) It may also be necessary to determine whether the point must be resolved with certainty. For example, is there reasonable possibility that at some later date the Comptroller General might disallow the expenditure of funds or the transfer of funds from one department to another because an authorized committee, e.g., USIB, failed to exercise a prescribed function? Will a Rockefeller-Churck-Pike investigation of another time charge the Executive with inadequate direction, responsibility or accountability because USIB and other committees ceased to function notwithstanding that the NSC created them and directed them to perform functions, and neither the President nor the NSC ever authorized or directed that they cease to function?

5. NSCID No. 2 directs certain activities, assigns certain responsibilities for other activities and authorizes or permits still others. The DCI shall ensure that Agency and governmental activities do not overlap and collection gaps do not exist and shall coordinate the exploitation of foreign language publications with similar activities of other departments. The "senior U.S. representative" abroad shall coordinate collection activities in his country. The Departments of State and Defense shall collect intelligence of certain specified categories. CIA shall monitor foreign radio and television propaganda and press broadcasts and shall conduct the exploitation of foreign language publications. CIA shall be responsible for the exploitation within the United States of non-governmental organizations and individuals as sources of foreign intelligence information. CIA may "collect intelligence abroad in support of assigned functions or as a byproduct of the assigned functions."

6. Of the above mandatory duties and responsibilities of the DCI, none is required by the Executive Order. The duty required of U.S. citizen representatives abroad is not required by the Executive Order. The mandatory collection duties of the Departments of State and Defense are also mandatory under the Executive Order. The mandatory duties of CIA are mandatory also under the Executive Order but only "as directed by the National Security Council." The functions which CIA may undertake are authorized also by the Executive Order but only "in accordance with directives of the National Security Council."

7. NSCID No. 3 directs CIA to maintain an "outline of all basic intelligence required by the Government" and requires that basic intelligence be maintained in National Intelligence Surveys in accordance with NSC-approved instructions. The DCI is responsible for developing, maintaining and disseminating such surveys and shall request assistance from other departments. NSCID No. 3 also defines certain categories or types of intelligence. It requires agencies to maintain "adequate research facilities." Under NSCID No. 3 State, Defense and CIA shall produce certain specified categories of intelligence and all departments and agencies shall produce intelligence on atomic energy.

8. The Executive Order does not require the maintenance of an outline of basic intelligence or the maintenance of the National Intelligence Survey. It does not require the maintenance of adequate research facilities by all agencies. The production of the specified categories of intelligence by State is not also required by the Executive Order, but that requirement with respect

to Defense is included in the Executive Order. The requirement on all agencies concerning atomic energy intelligence is not also required by the Executive Order.

9. NSCID No. 7 provides for the dissemination of critical intelligence, a subject not mentioned in the Executive Order.

10. Thus of the activities required by the NSCIDs, some are not also required by the Executive Order and some are not authorized by the Order. It would follow that it would be in order to recommend the rescission of the NSCIDs, without substitute regulation, only upon informing the National Security Council of the duties and activities which would no longer be required or authorized and upon advising the NSC that there is no need to continue to perform those functions.



Associate General Counsel

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#### Remarks:

Dick:

Our paper on NSCIDs 2, 3 and 7, herewith, unfortunately somewhat lengthy. The gist is that the Executive Order is not a complete replacement of the three NSCIDs. Paragraphs 1, 2, 3 and 10 are the important ones.

The paper also suggests guidelines, as to time, for decisions required by, or as a result of, the Executive Order.

We have written the paper with the assumption that it may be desired to make it available to others outside the Agency. We have additional copies.

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Associate General Counsel, 7D07 Hqs	27Feb76
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